

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. DAUGHERTY, JR.

Appeal No. 2002-2024
Application No. 09/197,404

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, 6 through 18 and 20 through 22. Claims 23 and 24, the only other claims pending in the application, stand allowed. Claims 4, 5 and 19 have been canceled.

Appellant's invention relates, in general, to a railway coupling device and, more particularly, to connection assemblies

Appeal No. 2002-2024
Application No. 09/197,404

for use in articulated coupling arrangements and slackless drawbar assemblies which are used in the railway industry to couple together the adjacently disposed ends of a pair of railway type freight cars in a substantially semi-permanent fashion. In particular, it is the embodiment seen in Figure 10 of the application that is set forth in the claims before us on appeal. Independent claims 1 and 18 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

McCloskey	3,528,714	Sep. 15, 1970
Wallace et al. (Wallace '679)	5,065,679	Nov. 19, 1991
Narkon et al. (Narkon)	5,110,221	May 5, 1992
Daughterety, Jr. et al. (Daughterety '819)	5,172,819	Dec. 22, 1992
Daugherty, Jr. et al. (Daugherty '082)...	5,219,082	Jun. 15, 1993

Claims 1 through 3, 6 through 13, 16 through 18 and 20 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 in view of Narkon.

Appeal No. 2002-2024
Application No. 09/197,404

Claims 1 through 3, 6 through 13, 16 through 18 and 20 through 22 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daugherety '819 in view of Narkon.

Claims 1, 3, 6 through 13, 17, 18 and 20 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daugherty '082 in view of Narkon.

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daugherty '082 in view Narkon as applied to claim 1 above, and further in view of McCloskey.¹

¹ It appears to us that the above-noted rejections based on Daugherety '819 and Daugherty '082 are merely cumulative and superfluous since the disclosures of those two patents appear to add nothing of significance that is not already disclosed in Wallace '679. The examiner's statement of the differences between the applied prior art references and the claimed subject matter is essentially identical in each of the rejections based on Wallace '679, Daugherety '819 and Daugherty '082, as is the examiner's statement regarding the teachings of Narkon and each of the statements supporting the examiner's conclusion of obviousness. It would seem the examiner would be well served to review MPEP § 706.02, wherein it is noted that cumulative rejections like those above should be avoided.

Rather than reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by appellant and the examiner regarding those rejections, we make reference to the examiner's answer (Paper No. 22, mailed January 30, 2002) for the reasoning in support of the rejections², and to appellant's brief (Paper No. 20, filed December 6, 2001) and reply brief (Paper No. 23, filed April 10, 2002) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

² While the examiner's answer (page 11) appears to make note of an appeal conference being held, we observe that the conferees have not initialed next to the typed indication of the conferees initials in the examiner's answer as required in MPEP § 1208, which indicates that the typed or printed names of the conferees should appear on the answer below the primary examiner's signature and that the conferees "must place their initials next to their name."

In rejecting claims 1 through 3, 6 through 13, 16 through 18 and 20 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 or Daugherety '819 in view of Narkon, the examiner has urged (answer, pages 3-5) that Wallace '679 and Daugherety '819 each teach all the limitations of the above-noted claims except for a connection assembly with a single retainer and a one piece liner having a substantially spherical inner surface and an outer spherical surface. To account for these differences the examiner turns to Narkon, pointing to Figure 2 and urging that this patent teaches use of a single retainer and one piece liner member having a substantially spherical inner surface in cooperation with a portion of the inner surface of the aperture in an articulated joint or bearing assembly.³ From these teachings, the examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify Wallace '679 or Daugherety '819 to include the use of a retainer member engageable with at least

³ Although the examiner does not identify in the rejection exactly what elements of Narkon are being referred to, we note page 8 of the answer wherein the examiner contends that Narkon teaches

a single retainer (16) and a one piece liner member (26) which in cooperation with a portion of the inner surface of the outer race member (14) of the articulate joint assembly disclosed by Narkon et al.

a portion of the inner surface of a male connecting member forming a substantially spherical inner surface therein and a one piece liner having a substantially spherical inner surface and an outer spherical surface in cooperation with a portion of the inner surface of the male connection member as taught by Narkon so as to obtain certain benefits specifically noted on pages 3-5 of the examiner's answer.

Like appellant, our review of the patents to Wallace '679, Daugherety '819 and Narkon finds no teaching, suggestion, or motivation for a combination of the disparate devices disclosed therein (i.e., a coupling apparatus for semi-permanently connecting adjacent ends of a pair of railway cars together as in Wallace '679 and Daugherety '819, and a self-aligning track roller as in Narkon) in the manner posited by the examiner. In that regard, we direct attention to pages 9-13 of the brief and pages 2-3 of the reply brief, noting our agreement with appellant's arguments therein. None of Wallace '679, Daugherety '819, or Narkon disclose, teach, or suggest a male connection member in a railway car connection assembly constructed in the particular manner required by appellant's claims on appeal, wherein at least a portion of the inner surface (15) of the male

connection member and the inner surface of the retainer member (21) received therein cooperate together to form a substantially spherical inner surface of the male connection member capable of retaining the substantially spherical member (42) of the connection assembly therein. In addition, it is highly questionable whether the references applied by the examiner teach or suggest a one piece liner member as defined in the claims on appeal, since element (26) pointed to by the examiner in Narkon appears to be a coating of self-lubricating material applied to and fixedly secured to the outer surface of inner race member (10) and not what one of ordinary skill in the art would consider to be a one piece liner member "for positioning around a predetermined outer portion of said spherical member" set forth in the claims on appeal.

Moreover, since Narkon has no male connection member like that in Wallace '679 or Daugherety '819 and the elements (14) and (16) of Narkon pointed to by the examiner make up the two piece outer race (12) of the self-aligning track roller described therein, it appears to us that appellant has correctly concluded (brief, pages 11-12) that a combination of Wallace '679 or Daugherety '819 and Narkon following the teachings of those

Appeal No. 2002-2024
Application No. 09/197,404

references would, at best, merely result in the replacement of one two piece race assembly (i.e., 44 of Wallace '679 or Daugherety '819) with another two piece race assembly like that shown in Narkon, and not result in any other modification of the male connection member (20) seen in Wallace '679 and Daugherety '819.

For the above reasons, we will not sustain the examiner's rejection of claims 1 through 3, 6 through 13, 16 through 18 and 20 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 in view of Narkon, or over Daugherety '819 in view of Narkon.

As for the additional rejection of claims 1, 3, 6 through 13, 17, 18 and 20 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Daugherty '082 in view of Narkon, since the structure of the male connection member (20) in the coupling apparatus of Daugherty '082 and the race assembly (36) received therein are generally the same as those seen in Wallace '679 and Daugherety '819, and the examiner's statement of the rejection is basically the same except for changing the name of the primary reference, we observe that our comments above regarding the

failings of the proposed combinations of Wallace '679, Daugherety '819 and Narkon apply equally well to the combination of Daugherty '082 and Narkon. We also share appellant's views with regard to this rejection as set forth on pages 13-14 of the brief. Accordingly, the examiner's rejection of claims 1, 3, 6 through 13, 17, 18 and 20 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Daugherty '082 in view of Narkon will likewise not be sustained.

The only other rejection for our review is that of dependent claims 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Daugherty '082, Narkon and McCloskey. We have reviewed the teachings of McCloskey, and find that even if combined as urged by the examiner, there is nothing in the teachings of McCloskey which makes up for or otherwise provides response for the deficiencies in the basic combination of Wallace and Daugherty '082 and Narkon, as noted above. Thus, this rejection will also not be sustained.

Since we are unable to sustain any of the rejections posited by the examiner, it follows that the examiner's decision to

Appeal No. 2002-2024
Application No. 09/197,404

reject claims 1 through 3, 6 through 18 and 20 through 22 of the
present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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Appeal No. 2002-2024
Application No. 09/197,404

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